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5 In Pro Se

FILED
JUL 31 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 Howard Hershops,

CASE No. C-06-6644 JF/RS

12 Plaintiff

PLAINTIFF HERSHIPS' OPPOSITION
DEFENDANT KIRSCH'S MOTION
TO DISMISS COMPLAINT

13 vs

14 The Superior Court of California
15 County of Santa Clara et al.

DATE: Sept. 5, 2008
TIME 9:00 AM
COURT ROOM 3 5TH FL.

16 Defendants.

17 STATEMENT OF CASE

18 This case has its origin of abuses of the judicial process by defendant Steven Todd Kirsch, of the
19 Santa Clara County Superior Court and also of the Santa Clara County District Attorney's Office.

20 It seems that defendant Kirsch and his group has filed 387 small claims case against defendants into
21 the Santa Clara County Superior Court limited division in a 18 month period of time.

22 Defendant Kirsch legal theory was that the Small Claims Court could hear 16 separate cases in one
23 trial for \$2,500.00 and that the small claims court could then hold one trial of about 10 minutes and then
24 enter 16 separate judgments at \$2,500.00 each so that defendant Kirsch could obtain a judgment far in
25 excess of the statutory limit of small claims court, some \$5,000.00 at the time vs a small claims judgment
26 of \$42,500.00.

27 In fact this procedure violates a California Supreme Court decision which held that as long as the
28 judgment was within small claims court jurisdictional limit then a judgment without a jury trial does not
violate a defendant State Constitutional Rights to a jury trial.

1 In fact the San Jose Mercury News did an article about all of Kirsch's filings and called it the Santa
2 Clara County Superior Court of Steve Kirsch as every Friday at the Los Gatos Court House a court
3 commissioner would hear only Steve Kirsch cases, see Exhibit 1.

4 Moreover, Defendant Kirsch this case had its origin in these abuses by defendant Kirsch and it
5 continues and has gotten worse over the years.

6 Defendant Kirsch's relationship with both Court judges in Santa Clara County and deputy district
7 attorney see Exhibit 2.

8 With the above in mind, Kirsch had the Deputy District Attorney Mike Adams appear before Judge
9 Pichon for issuance of arrest warrant for both Heartwell and Herships knowing full well that Judge Pichon
10 had direct involvement with Martha Kanter who was also a Board member of the Kirsch Foundation and
11 also its secretary and was also the direct supervisor of Judge Pichon's husband.

12 The Judge never made any disclosure of these facts even when questioned about them at 4 days of the
13 preliminary hearing before said judge.

14 Plaintiff filed a "statement of disqualification" and the Judge disqualified herself, see Exhibit

15 In fact Judge Pichon permitted Defendant Kirsch to enter into a Civil Compromise of the criminal
16 case with co-defendant Heartwell upon Heartwell payment to Kirsch of \$20,000.00 so that the criminal
17 case would be dismissed, see Exhibit 4.

18 In fact the very same deal was offered to plaintiff Herships, payment to Kirsch would make the
19 criminal charges go away, see Exhibit 5.

20 It is plaintiff's intention to file a notice of motion and motion leave to file an amended complaint in
21 this case alleging a conspiracy to violate plaintiff Herships civil rights with the District Attorney Office of
22 Santa Clara County and a Malicious prosecution case under Title 42 section 1983 as well as Civil RICO
23 complaint as extortion is a predicated act under RICO

24 Additionally, Judge Jenkins issued a stay of all proceedings in this case under the controlling Ninth
25 Circuit case of *Adam vs Hawaii*, 235 F3d 1160 at 1163 (9th Cir 2000), which held a civil rights
26 complaint brought under Title 42 U.S.C. section 1983 seeking money damages cannot be dismissed while
27 the state criminal case is still pending.

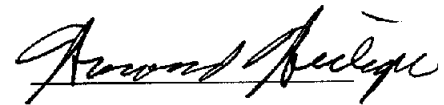
28 Plaintiff is filing herewith a Motion to File an amended complaint alleging a malicious prosecution

1 under Title 42 U.S.C. 1983 cause of action as well as a civil RICO cause of action.

2 Plaintiff should be permitted to file this amended complaint in this case as it readily apparent that
3 based upon these undisputed factual showing that the criminal case cannot proceed to a jury trial based
4 upon these undisputed facts.

5 Wherefore, defendant Kirsch's motion to dismiss must be denied as the third amended complaint
6 states causes of actions against defendant Kirsch.

7
8 Dated July 30, 2008



Howard Hersh

EXHIBIT 1

Posted on Sun, Nov. 20, 2005

Crusader against junk faxes gets his day in court -- every week

By Sean Wehby
Mercury News

On most every Friday afternoon, Department 96 in the Los Gatos courthouse opens session for what can best be described as the Santa Clara County Court of Steve Kirsch.

The unusual small claims calendar was created in September -- with its own commissioner and set hours -- to ease the bureaucratic tsunami of claims filed by the 48-year-old Los Altos Hills philanthropist. Kirsch, a Silicon Valley tech maven who founded search engine Infoseek, is determined to make junk faxers pay -- in increments of \$5,000 or less -- for the temerity of that invasive tell-tale tone, followed by an ad using *his* ink and *his* paper.

Some observers hold up Kirsch's crusade as a noble effort -- fighting the good fight against the irritation, costs and sometimes-fraudulent advertisement of junk faxes.

But others question whether it's appropriate to inundate a tiny, resource-strapped court intended to settle such disputes as whether a landlord should refund a security deposit.

It's about justice, Kirsch says. Junk faxing consumes him so much that he equates it with "someone shooting you, robbing you at knifepoint every day."

The special court theoretically handles cases from anyone who files multiple small claims against a common entity. But it was specifically created for, and has mostly dealt with, cases filed by Kirsch; his current company, Propel Software; and a Propel employee Kirsch has on the payroll specifically to file cases against junk faxers.

Since November of last year, Kirsch has filed 44 small claims -- many of them against a single defendant for sending multiple faxes. San Jose based Propel has filed 26 more. And Propel employee Jimmy Sutton has 62 more claims. Kirsch said he has won judgments totaling about \$100,000 and collected about \$25,000.

He also has created a Web site called Junkfax.org, detailing various legal strategies to stop junk faxing. There is even a section explaining how to seek contempt charges, jail time and extradition.

"I have this pretty standard day job," said Kirsch, whose latest company -- perhaps no surprise -- sells products to combat Internet spam. "I sit at a computer terminal all day and answer e-mails and design algorithms to combat spam. But at night, I turn into this super-hero that goes after the junk faxers."

One of his targets, Katrina Hartwell, says she isn't evil; she's a small businesswoman battling an arrogant millionaire with a vendetta. The Burlingame mortgage broker is a recent widow who says her late husband contracted with a fax company that sent Kirsch faxes promoting her brokerage.

Now -- after two years of wrangling in small claims court -- she owes Kirsch \$42,000, a judgment she is fighting.

"To this guy it's a hobby, a sport, to completely manipulate the court system," said Hartwell, 47. "But I'm destroyed. This whole thing is ruining my life."

Kirsch, who has asked the court to send Hartwell to jail for contempt of court, is unapologetic. "If she wants to play hardball with the system, I'm not going to let her get away with it," he said.

With a few exceptions, federal law prohibits sending advertising faxes without permission. A new state law -- which Kirsch championed -- allows recipients of unsolicited faxes to sue for each one.

Kirsch studied the law, mastering books, attending sessions. Three years later, he says he has never lost a claim.

"Kirsch's Court" was created after court clerks in Palo Alto complained to the presiding judge of Santa Clara County that they were being overwhelmed.

"We had to do something about it," said Presiding Judge William Martin. "We have limited resources, but we can't send them to Timbuktu to litigate their matters."

Martin said the special session -- which is held almost every week to accommodate Kirsch's cases and similar claims -- does not cost taxpayers extra money because the commissioner who hears the cases and the courthouse where they're heard were available to handle the work.

Martin said he was unaware of any similar small claims arrangements. When asked if he thought Kirsch's anti-fax mission was an appropriate use of court resources, Martin replied: "If the law allows them to do it, then they are allowed to do it."

"I'm complying with the rules," Kirsch said. "I'm not the bad guy here."

Contact Sean Webby at swebby@mercurynews.com or (650) 688-7555. Fax (650) 688-7588.

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EXHIBIT 2

May 14, 2008

Honorable Catherine Gallagher
Presiding Judge
Santa Clara Superior Court
191 N. First St
San Jose, CA 95113

Re: Commissioner Steven Yep repeated refusals to provide legal and factual basis
for his denials of critical motions

Dear Judge Gallagher,

Thank you for looking into the issue I brought to your attention regarding Commissioner
Yep.

By now, I'm sure you've reviewed the case file. I think it is pretty clear that my motions
should have been granted, or at least, the Commissioner should have given me the benefit
of a hearing to overcome any objections he might have had. Instead, all I received was a
denial without reason. Not just once, but twice, on two different motions that I thought
should be slam dunks.

I'm one of the most sophisticated small claims plaintiffs in Santa Clara County. If I can't
figure out why he's denying my motions, and none of the lawyers or District Attorneys
I've asked about it can figure it out either, then how is ANYONE going to figure out
what it takes to get motions that should be granted approved by Commissioner Yep?

If this were just a problem with my case, I'd simply appeal the ruling. But my complaint
is not about my case. This issue is much larger than my case. **Commissioner Yep does
this with everyone else too!** Only a fraction of the motions are granted and those that are
not granted are simply "denied" without reason.

How does that serve to further justice by keeping people in the dark as to why their
motions are denied? Who benefits from that?

I don't have a problem with a judge denying my motions. But to both deny motions that
appear to be beyond doubt and also then refuse to provide a reason when expressly asked
is over the top.

I'm sure you'd be frustrated if this happened to you. If you properly served written post-
judgment interrogatories, they were ignored, and then you asked the court to compel and
the court denied your motion and refused to provide rationale when asked, I think you'd
be furious. I certainly was.

Steve Kirsch


I also welcome you to check me out. Commissioner Madden, Judges Yew, Hyman, Del Pozzo all know me as does District Attorneys Jim Shore and Pinaki Chakravorty, among others. All of them will tell you that if someone like me is so frustrated, there is definitely something wrong.

I've appeared before over a dozen different judges over the past 6 years in over 50 cases. I've never been so frustrated as I am now. Expecting most of the plaintiffs to have to go through the appeals process in order to discover why their motions are denied is unreasonable. Most will not do it. They will simply write off their judgement.

Moreover, if they appeal it, this is a waste of the court's time to have to deal with appeals which shouldn't have been done in the first place and wouldn't have been done if Commissioner Yep would simply explain his reasoning when asked.

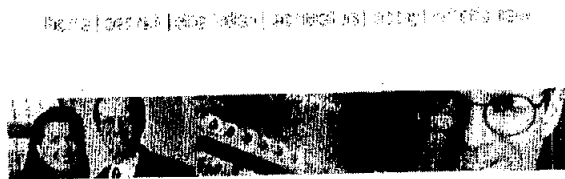
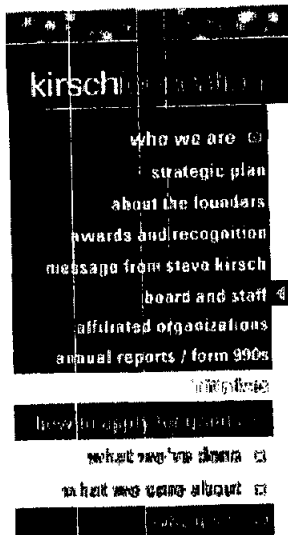
As things stand now, I will never bring another small claims case before Commissioner Yep in the future because there is simply no point. Even if I win, I'll just be denied reasonable motions needed to collect.

I'm sorry to have to bring this to your attention, but I know others must share my frustration. It is something that we are all powerless to solve and forcing everyone to go through an appeals process doesn't solve it either (since most will simply give up like I am about to do). This is a problem that only you can solve.

Thank you,

Steven T. Kirsch

EXHIBIT 3



Board

[Board of Directors](#) | [Board Member Emeritus](#)

Board of Directors

A three-person Board of Directors sets policies, determines the strategic direction, and approves grants for the Kirsch Foundation.



Steven T. Kirsch
Chairman



Bill Johnson
Vice Chairman/CFO



Martha J. Kanter
Board Member/
Secretary

Steven T. Kirsch Chairman of the Board

Steve Kirsch, 50, is founder and chairman of Propel Software and CEO of Abaca, both Silicon Valley start-ups. He is, however, perhaps best known as the founder and chairman of Infoseek Corporation, an Internet navigation service that was acquired by the Walt Disney Company in November 1999.

Prior to Infoseek, Steve founded Frame Technology in 1986 and Mouse Systems in 1982. He has been involved with the Internet since 1972 when he worked with the "Father of the Internet" Vint Cerf while attending high school. He has BS and MS degrees in Electrical Engineering and Computer Science from MIT.

In addition to his current companies, Steve has become well-known for his efforts to eliminate junk faxes. He has established and maintains a comprehensive site, www.junkfax.org, to help consumers and businesses and he has won lawsuits and judgments against junk fax operations.

Steve is also a member of the Advisory Board of the Ploughshares Fund. Ploughshares, a Foundation grant recipient and grantmaking partner, focuses its activities on nuclear disarmament and non-proliferation, a cause the Foundation champions.

Steve is well recognized as a philanthropic leader within Silicon Valley and beyond its borders. For more information about Steve, visit [About the Founders](#).

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Bill Johnson Vice Chairman/CFO

William "Bill" Johnson is the founder and president of Embarcadero Publishing Co., owner of six community newspapers on the Peninsula, in the East Bay and Marin County. The company also operates Palo Alto Online, a comprehensive news and information website serving the Palo Alto area. Bill serves as publisher of the largest Embarcadero newspaper, the *Palo Alto Weekly*, which circulates to homes in Palo Alto, Menlo Park, Atherton, Portola Valley, Los Altos Hills, Stanford and East Palo Alto. The company's other newspapers are *The Almanac*, *Mountain View Voice*, *Pleasanton Weekly*, *Danville Weekly* and *Pacific Sun*. Prior to forming his company in 1979, Bill served as a senior aide to Congressman Pete McCloskey and as a consultant to the California Coastal Commission.

Bill serves on the boards of numerous community and professional organizations, including the California Newspaper Publishers Association and the California First Amendment Coalition. He is also a board member of Silicon Valley Community Foundation. Bill earned a BA in Communications from Stanford University.

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Martha J. Kanter
Board Member/Secretary

Martha J. Kanter is chancellor of the Foothill-De Anza Community College District, one of the most prominent community college districts in the nation. She held various positions at institutions such as San Jose City College, the California Community Colleges Chancellor's Office, and De Anza College prior to becoming chancellor in 2003. She holds a doctorate in organization and leadership from the University of San Francisco, a master's degree in education with a concentration in clinical psychology and public practice from Harvard University and a BA in sociology from Brandeis University.

Martha is active in a wide variety of national, state and local organizations that include the nationally renowned League for Innovation in the Community, San Jose Museum of Art, Hispanic Foundation of Silicon Valley, and Stanford Business School's Alumni Consulting Team. She also volunteers as an education adviser to the Mayfair Improvement Initiative and SpringBoard Forward.

Over the years, she has received honors from the 24th Assembly District, *San Jose Mercury News*, The Women's Fund, American Association of University Women, Chinese Historical and Cultural Project, National Organization for Women-California Chapter, and the Santa Clara County Commission on the Status of Women.

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Board Member Emeritus

In recognition of his service on the Kirsch Foundation Board of Directors from 1999-2007, Peter Hero was named Board Member Emeritus in July 2007.



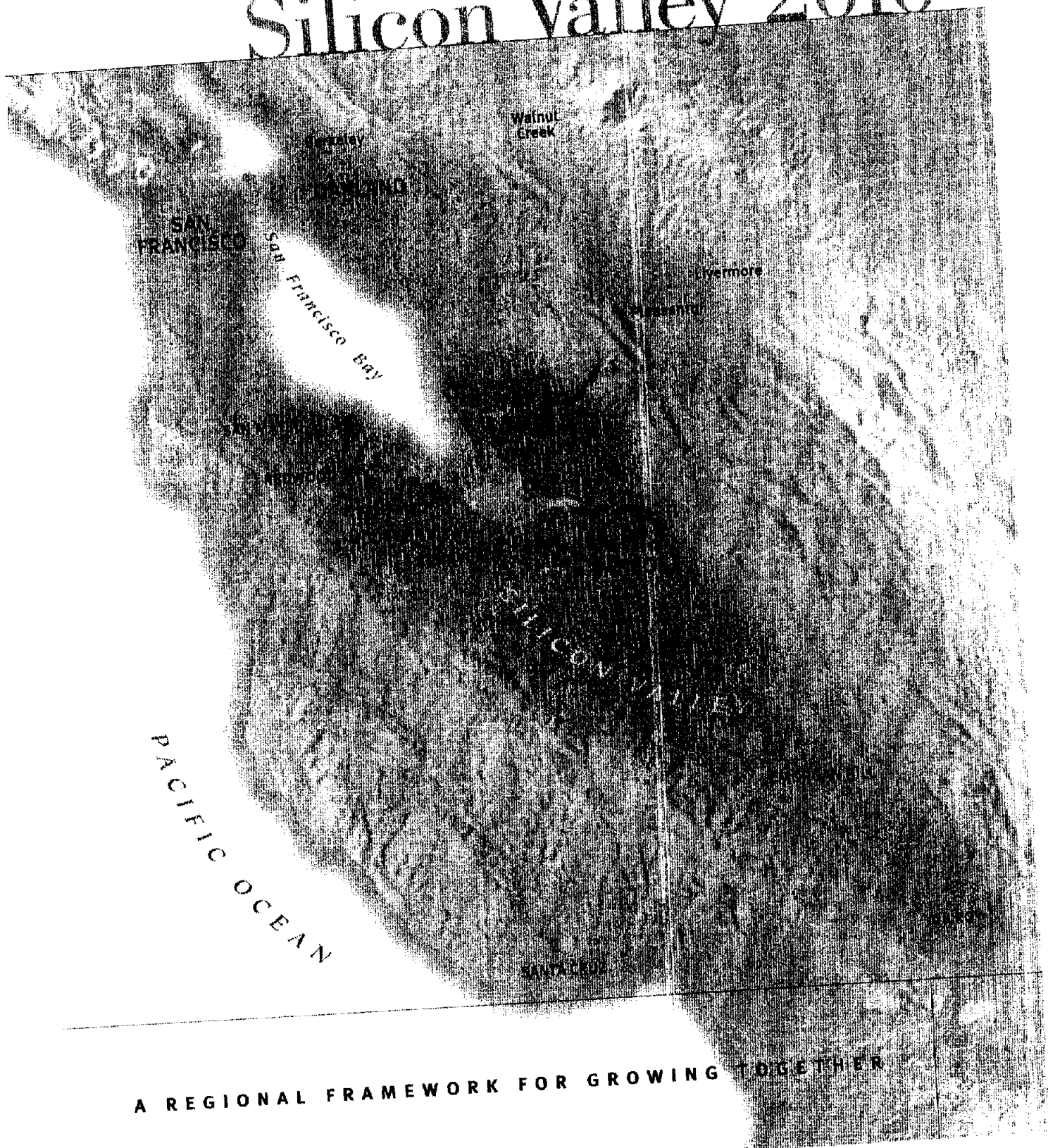
Peter deCourcy Hero

Peter Hero currently serves as Senior Advisor to the President of Silicon Valley Community Foundation. From 1989 to 2007, Peter was the President and CEO of Community Foundation Silicon Valley. For three years he also served as the Chairman of the Council on Foundations' Committee on Community Foundations, and currently serves on the Board of Directors of the Council on Foundations, The National Trust for the Humanities, The Foundation for a Civil Society, Stanford University Haas Center for Public Service, and The Silicon Valley Housing Leadership Council. President George Bush appointed him to a six-year term on the National Council on the Arts in 1991. Peter holds an MBA from Stanford University Graduate School of Business, an MA in Art History from Williams College and a (Honorary) Doctor of Laws from Maine College.

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Silicon Valley 2010



A REGIONAL FRAMEWORK FOR GROWING TOGETHER

Vision Leadership Team

Joint Venture: Silicon Valley Network convened the Vision Leadership Team (VLT) to guide the development of a shared vision for Silicon Valley by incorporating extensive input from the community and experts. Composed of a cross section of leaders, the VLT is representative of our region's racial, age, gender, geographic and political diversity.

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Financial Corp.
Scott Wylie, Director of Corporate
Communications, Raychem Corporation

Joint Venture: Silicon Valley Network is a nonprofit regional collaborative established to enhance the economic vitality and quality of life in Silicon Valley. We bring people together from business, government, education and the community to identify and to act on regional issues.

Silicon Valley 2010: A Regional Framework for Growing Together has been endorsed by the Joint Venture Board of Directors.

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De Anza celebrates King's Birthday

peakers honor civil rights leader, urge students to take stock of their lives

By: Meera Kumbhani

Posted: 1/29/03

"The Rebirth of the Dream in a New Generation" transformed Martin Luther King Day, in the eyes of students, from another day off from school to a commemoration of the dreams and ideals of a cultural icon.

That theme shaped a four-day celebration and remembrance, from Jan. 13-16, of Dr. King's struggles and visions of the world today. The events culminated on Thursday, Jan. 16, with a formal dinner, a compilation of all the main events of the week, including two keynote speakers: Penni Sweetenburg-Lee in the morning and Judge Rise Jones Pichon in the evening.

"I really have to question how much have we done in society, what needs to be done, and how little we've accomplished in my view," said De Anza president Martha Kanter to commence the evening program, saying that King's dream has not been completely fulfilled yet.

Quoting Stanford University professor and director of the Martin Luther King, Jr. Papers Project, Clayborn Carson, Kanter added, "It is our responsibility to continue that fight for freedom.' That's why we do what we do here at De Anza College. We're about opening doors to people of color, to underrepresented students, to the disadvantaged, to people who need a chance to have a future."

Kanter said, "Eighty percent of all students of color who transfer and go into the workforce in California come through the doors of a California community college. We have 40,000 students doing so at De Anza every year."

In light of King's dream, Kanter and keynote speaker Pichon have crafted a long-term educational plan called "Vision 2010 for Silicon Valley" that declares a goal to increase the success rate of all ethnic, gender and disability groups, so they are incomparably high, with no more than five percent variance among the different groups.

The plan states, "Achieving this goal may be a towering feat. No matter how strong our commitment, we won't make true progress unless the entire community participates."

Kanter said, "That's what I think Dr. King stood for - involving the entire community, touching the heart of every person to say 'You can make a difference, you can change the lives of people we are with in this world. I think Dr. King would have been proud of our regional vision, because it involves his goal to create an inclusive society that connects people to opportunities to achieve economic

Pichon received a standing ovation from the audience.

"If you're an African-American student, you can't help but be proud. Even just sitting in the room and looking around, there were just so many accomplished African-Americans here," said De Anza student trustee Deanna Stewart. "From a non-African-American student view, I was proud of my school. I was proud of my president. I was just proud to be associated with a group of people who care about ideals."

"I hope [the students] learned about what the struggle was all about, and what it still is about," said Planning Committee Co-Chair Texanna Davis. "Our goal was to make sure students didn't say, 'Well, I went, but I didn't really learn anything.'"

In the morning program, Sweetenburg-Lee's speech included a three-step "Recipe for Success" that transcended race.

Step 1: Develop a healthy self-identity. "There are crabs in the pot who will put you down just as you start to rise up. They will say, 'your dreams are too ambitious' ... Stop waiting for people to affirm you or give you a chance. Make your own chance."

Step 2: Don't linger in low places. "A low place is where you're stuck ... a rut where we grumble and complain."

Step 3: Set sights on a hill country, a "well-defined, elevated high place."

"I think the ultimate message here is a message calling people to serve, to look at Dr. King's life and his commitment to serving mankind, regardless of race, creed, color, or nationality," said Sweetenburg-Lee. "And now we too have been given the privilege, the same ability, to make a difference and to serve. So I think the greatest message is to commit ourselves as educators and students, and realize that we have an obligation to help each other and support each other."

"I leave this event with a greater commitment. I'm more motivated and inspired than ever in regard to servitude, making a difference in the lives of people, and understanding how important it is to having a healthy concept of who you are," said Sweetenburg-Lee. "Every time I give a message of that magnitude, I get re-inspired to be dedicated. From what I felt in the room tonight, the people will leave with a greater determination and a greater readiness, and can use what they have to help other people."

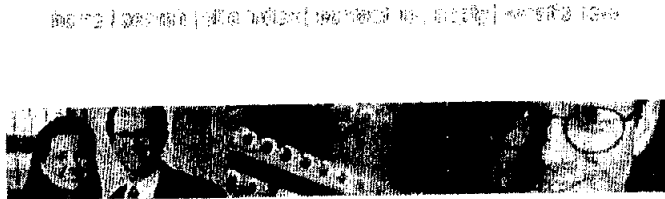
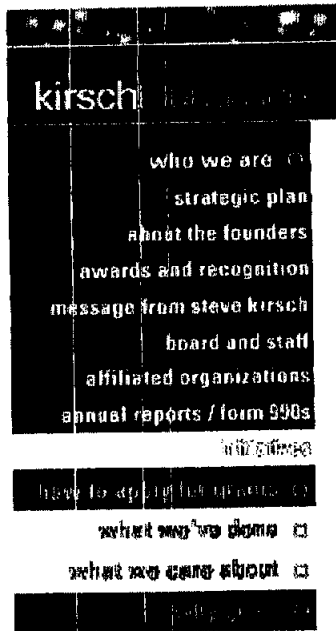
In addition to Pichon's speech, a highlight of the evening program was a performance by De Anza's Actors' Ensemble, directed by instructor Sarah Albertson. The performance documented the struggles of Rosa Parks and the lesser-known stories of child freedom fighters Rachel West and Sheyann Webb.

"Rosa Parks is always focused on, but Rachel and Sheyann are not," said SJCC instructor Blair Dunton. "I thought it was interesting and refreshing that they talked about these two children, these girls who couldn't even vote who were fighting for black voter rights."

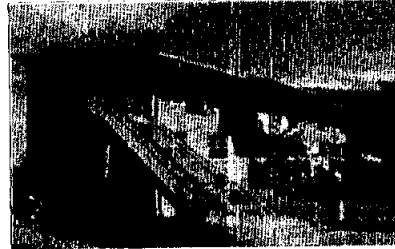
Sweetenburg-Lee expressed satisfaction at the diversity of audience, explaining that most Martin Luther King events she has spoken at have mostly been attended by only African-Americans. "When you see a climate of the culture such as tonight, where students came from all ethnic groups, all ages, different sexual orientations and all cultural backgrounds, it is another opportunity to teach and to

share, and to bring people to a place where they can respect differences."

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Kirsch Center for Environmental Studies



The recently completed Kirsch Center

On October 14, 2005, the dedication of the Kirsch Center for Environmental Studies took place at DeAnza College in Cupertino, California. In June 2000, the Foundation committed \$2 million to help create a building that teaches about energy and resources and that would set a high standard for green construction for California's colleges and universities. Designed through an integrated team approach that engaged DeAnza college students, alumni, faculty and staff as well architecture and construction professionals, this "green" building serves as a national model of conservation techniques. It incorporates photovoltaic (PV) on-site electrical generation, natural day-lighting and ventilation, recycled, renewable and nontoxic materials, water conservation and distance education with videoconferencing as an important element. Read [Steve Kirsch's speech](#) from the dedication ceremonies.



Left to right: Steve Kirsch; Martha Kanter, Foothill-DeAnza Community College District Chancellor; Michele Kirsch

EXHIBIT 5

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

BEFORE THE HONORABLE RISE JONES PICHON, JUDGE

THE PEOPLE OF THE STATE OF
CALIFORNIA, Plaintiff,
vs.
HOWARD RALPH HERSHIPS,
 Defendant.

NO. BB517233

REPORTER'S TRANSCRIPT OF PROCEEDINGS

OCTOBER 19, 2006

OCTOBER 27, 2006

NOVEMBER 6, 2006

NOVEMBER 7, 2006

APPEARANCES:

For the Plaintiff: PINAKI CHAKRAVORTY
 DEPUTY DISTRICT ATTORNEY

For the Defendant: HOWARD HERSHIPS, In Pro Per

BARBEE MACHADO, CSR 9355, official Reporter

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1 MR. CHAKRAVORTY: Finally, I wanted to put on
2 the record the offer in this matter, which I don't believe
3 has ever been on the record. I believe it's a
4 misdemeanor. The offer was made to the co-defendant, and
5 it's the same offer.

6 THE COURT: Do you understand that,
7 Mr. Hershops?

8 MR. HERSHOPS: I understand. The problem is
9 that I can't plead guilty to something I am not guilty of,
10 Your Honor.

11 THE COURT: Mr. Hershops, you have some motions.

12 MR. HERSHOPS: Yes, I do. My subpoena ducas
13 tecum was served on Mr. Kirsch by the private
14 investigator. I gave him the subpoena, and I gave him the
15 return, and the record is he didn't want to give me a copy
16 because it shows the address where service was affected on
17 Mr. Kirsch. I'm not supposed to have that.

18 THE COURT: Who didn't want to give it to you?

19 MR. HERSHOPS: My private investigator. Said
20 would he file it. Then he informed me that he did file
21 it. I've never received the documents, and the documents
22 are not here in court, and I need the documents to proceed
23 with only some of this preliminary hearing, and I'm at a
24 loss as far as what to do as far as that issue goes,
25 because if he didn't comply with the subpoena ducas tecum,
26 he's in violation and a warrant can issue for his arrest.

27 I mean, I checked with the clerk, they don't
28 have anything. They have no records of anything in their

1 A. I don't recall.

2 MR. CHAKRAVORTY: Objection, Your Honor; there's
3 no question yet.

4 THE COURT: The objection is sustained.

5 BY MR. HERSHIPS:

6 Q. You have -- have you paid Mr. Kirsch anything
7 for damages done to his car in this case?

8 A. I don't recall actually. It was a settlement,
9 so it included everything.

10 MR. HERSHIPS: Well, I would address the issue
11 of the, quote, settlement in this case. You know this is
12 my next line of questioning to show what is going on.

13 MR. CHAKRAVORTY: I see the foundation for
14 relevance, Your Honor. I just wanted him to lay the
15 appropriate foundation. I'm not sure it's been laid at
16 this point, but I will go ahead and stipulate that he can
17 ask the question at this time.

18 THE COURT: Okay. Go ahead.

19 BY MR. HERSHIPS:

20 Q. So you entered into a settlement agreement, a
21 civil compromise in this case, and in doing so, have you
22 paid Mr. Kirsch for the damages to his vehicle?

23 A. To clarify -- I need clarification of the
24 question. It was very complex, the whole settlement. It
25 involved the civil issue and the criminal issue, and it
26 was all consolidated into a settlement. That's why I'm
27 having a difficult time answering this pending question.
28 It was to settle both parts together.

PROOF OF SERVICE BY MAIL

I DECLARE AS FOLLOWS:

I AM NOT A PARTY TO THE WITHIN ACTION:

That I reside in the State of California.

That I placed a true and correct copy of the Motion Leave to File Third Amended Complaint and Opposition to Defendant Steve Kirsch Motion to Dismiss in a sealed envelopes addressed as follows:

John C Brown
Redenbacher & Brown LLP
580 California St Ste 1600
San Francisco, CA 94104

Santa Clara County Counsel
John Winchester
71 West Hedding 9th Floor
East Wing
San Jose Ca 95110

I then deposited the said envelopes in the U.S. Mail Box on July 31, 2008 in San Francisco, California with first class postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Dated July 31, 2008

